

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	Case No.: <b>09-N-15870-LMA</b>
	)	
<b>HOKYUNG KIM,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 151373,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent Hokyung Kim (respondent) is found culpable, by clear and convincing evidence, of violating rule 9.20, subdivision (c) of the California Rules of Court and of willfully disobeying or violating an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, specifically an order requiring respondent to comply with rule 9.20 of the California Rules of Court in violation of Business and Professions Code section 6103.<sup>1</sup>

The court recommends that respondent be disbarred from the practice of law.

**II. Pertinent Procedural History**

The State Bar of California, Office of the Chief Trial Counsel (State Bar) was represented in this matter by Deputy Trial Counsel Maria J. Oropeza (DTC Oropeza). Respondent failed to

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<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

participate in this matter either in person or through counsel and allowed his default to be entered in this matter.

On October 5, 2009, a 20-day letter was mailed to respondent at respondent's official membership records address. The 20-day letter was returned by the U.S. Postal Service bearing the stamp "not deliverable as addressed unable to forward."<sup>2</sup>

The State Bar filed a Notice of Disciplinary Charges (NDC) against respondent on October 15, 2009. A copy of the NDC was served by certified mail, return receipt requested, on respondent at his official membership records address on October 15, 2009. Respondent did not file a response to the NDC.

A Notice of Assignment and Notice of Initial Status Conference was filed on October 20, 2009, setting an in person status conference for November 30, 2009. A copy of the notice was properly served on respondent on October 20, 2009. The copy of the notice was returned to the State Bar Court by the U.S. Postal Service bearing a sticker indicating that it was not deliverable as addressed, and the U. S. Postal Service was unable to forward it.

Respondent did not appear at the November 30, 2009, status conference. That same day, the court filed an order setting forth that the State Bar was to submit a motion for the entry of respondent's default within 10 days. A copy of the order was properly served on respondent by mail; however, the copy of the order was returned to the State Bar Court by the U.S. Postal Service bearing a sticker indicating that it was not deliverable as addressed, and the U. S. Postal Service was unable to forward it.

On December 15, 2009, DTC Oropeza attempted to reach respondent by telephone at respondent's official membership records telephone number. The phone was answered by an answering machine, and the message stated, "You have reached HK Kim, I am away from my desk, please leave a message."<sup>3</sup> DTC Oropeza left a message stating that respondent had failed to appear at the November 30, 2009, status conference, and the court had ordered the State Bar to

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<sup>2</sup> See the declaration of DTC Oropeza attached to the State Bar's motion for the entry of respondent's default.

<sup>3</sup> See the declaration of DTC Oropeza attached to the State Bar's motion for the entry of respondent's default.

file a motion for entry of default. DTC Oropeza advised respondent of the possible outcome of this matter if it went through default and suggested that respondent file an answer to the NDC, verified the address at which he was served, and asked respondent to call DTC Oropeza.<sup>4</sup>

On December 16, 2009, the State Bar filed a motion for the entry of respondent's default. The motion also contained a request that the court take judicial notice of all respondent's official membership addresses pursuant to Evidence Code section 452, subdivision (h).<sup>5</sup> A copy of the motion was properly served on respondent on December 16, 2009, by certified mail, return receipt requested, addressed to respondent at his official address.

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on January 5, 2010, the court filed an Order of Entry of Default (Rule 200 – Failure to File Timely Response), Order Enrolling Inactive and Further Orders.<sup>6</sup> A copy of the order was properly served on respondent on January 5, 2010, by certified mail, return receipt requested, addressed to respondent at his official membership records address. The copy of the order, however, was returned to the State Bar Court by the U.S. Postal Service bearing a stamped notation indicating that it was not deliverable as addressed, and that the U. S. Postal Service was unable to forward it.

On January 29, 2010, the State Bar filed a brief on the issues of culpability and discipline and requested waiver of the hearing in this matter.<sup>7</sup> The matter was submitted for decision on February 1, 2010.

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<sup>4</sup> The State Bar has not had any contact with respondent since December 15, 2009, when DTC Oropeza left this message on respondent's answering machine.

<sup>5</sup> The court grants the State Bar's request and takes judicial notice of all respondent's official membership addresses to the date of the filing of this decision.

<sup>6</sup> Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after service of this order by mail.

<sup>7</sup> Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of respondent's prior record of discipline. The declaration of DTC Oropeza and Exhibit 1 attached to the State Bar's motion for the entry of respondent's default, as well as Exhibit 1 attached to the State Bar's brief, are admitted into evidence.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on December 6, 1990, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

#### **B. Violation of Section 6103 and Rule 9.20 of the California Rules of Court**

On June 23, 2009, the California Supreme Court filed a disciplinary order in State Bar Court Case No. 07-O-12632 (Supreme Court matter 172496). The disciplinary order required respondent to comply with rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the order. The order also suspended respondent from the practice of law.

The disciplinary order became effective 30 days after it was filed (Cal. Rules of Court, rule 9.18(b)) and at all times subsequent has remained in full force and effect.

Notice of the disciplinary order was properly served on respondent in the manner prescribed by rule 9.18(b) of the California Rules of Court at the address respondent maintained with the State Bar in accordance with Business and Professions Code section 6002.1, subdivision (a).

The deadlines for complying with rule 9.20, subdivisions (a) and (c) expired on August 22, 2009<sup>8</sup> and September 1, 2009, respectively.

Respondent failed to file proof of compliance as required by rule 9.20, subdivision (c) prior to the deadline. As of October 14, 2009, respondent had not complied with rule 9.20, subdivision (c).

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<sup>8</sup> Although the NDC alleged that this date was on or about August 24, 2009, this appears to be a typographical error, as 30 days from the effective date of the order (July 23, 2009) is August 22, 2009.

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully violated rule 9.20, subdivision (c) of the California Rules of Court by failing to file proof of compliance as required by rule 9.20, subdivision (c) by September 1, 2009.<sup>9</sup>

**C. Violation of Business and Professions Code Section 6103**

Respondent willfully violated the rule 9.20 order by failing to file proof of compliance as required by rule 9.20, subdivision (c) by September 1, 2009. Respondent therefore violated section 6103 by willfully disobeying or violating of an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear.

**IV. Mitigating and Aggravating Circumstances**

**A. Mitigation**

No mitigating evidence was offered or received, and none can be gleaned from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>10</sup>

**B. Aggravation**

Respondent's prior record of discipline is an aggravating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i).) On June 23, 2009, the Supreme Court issued an order in S172496 (State Bar Court Case No. 07-O-12632) suspending respondent from the practice of law for two years, staying execution of the suspension, and suspending respondent from the practice of law for a minimum of 90 days and until: (1) he makes specified restitution; (2) the State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and (3) proof of rehabilitation, fitness to practice, and learning and ability in the general law if he remains suspended for two years or more as a result of not satisfying the preceding conditions.

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<sup>9</sup>Rule 9.20, subdivision (d) provides that a suspended attorney's willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

<sup>10</sup>All further references to standard(s) are to this source.

Discipline was imposed for respondent's willful violation of rules 3-110(A), 4-100(B)(3) and 3-700(D)(2) of the Rules of Professional Conduct in one client matter. In mitigation, respondent had no prior record of discipline. In aggravation, respondent committed multiple acts of misconduct and his misconduct also significantly harmed his client. The court notes that respondent failed to participate in this prior disciplinary matter, and his default was entered for failing to file a response to the NDC.

Respondent's failure to participate in this current matter prior to the entry of his default is also an aggravating circumstance. (Standard 1.2(b)(vi).)

## **V. Discussion**

The primary purpose of disciplinary proceedings conducted by the State Bar is to protect the public, the courts and the legal profession, the maintenance of high professional standards and the preservation of public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

Rule 9.20, subdivision (d), provides in part that "[a] suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation." Standard 2.6 provides that respondent's violation of section 6103 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3[.]" Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

Timely compliance with rule 9.20 of the California Rules of Court performs the critical function of ensuring that all concerned parties, including clients and co-counsels, opposing attorneys and the courts, learn about an attorney's actual suspension from the practice of law. Compliance with this rule also keeps the State Bar Court and the Supreme Court apprised of the location of attorneys who are subject to their respective disciplinary authorities. (*Lydon v. State*

*Bar* (1988) 45 Cal.3d 1181, 1187.) Disbarment is generally the appropriate sanction imposed for wilful violation of rule 9.20. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Similar discipline has been recommended by the State Bar Court Review Department. (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and duties imposed on California attorneys, although he has been given opportunities to do so. This is exemplified by his failure to participate in this State Bar proceeding and by his failure to comply with the court order imposing compliance with rule 9.20, subdivision (c) of the California Rules of Court. Respondent's failure to comply with rule 9.20 undermines the basic function that rule 9.20 serves, i.e., ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.) The court also notes that this is the second time that respondent has failed to participate in a disciplinary matter and allowed his default to be entered. This suggests to the court that respondent is unwilling or unable to comply with his professional obligations and duties. Respondent's disbarment is therefore necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his willful disobedience of the order of the California Supreme Court.

## **VI. Recommended Discipline**

The court recommends that respondent Hokyung Kim be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is further recommended that respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.

## **VII. Costs**

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in section 6140.7 and as a money judgment. It is further recommended that Hokyung Kim be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

## **VIII. Order of Involuntary Inactive Enrollment**

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar of California. The inactive enrollment will become effective three calendar days after this order is served by mail.

Dated: March \_\_\_\_, 2011

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LUCY ARMENDARIZ  
Judge of the State Bar Court